United Nations S/2007/366

Security Council

Distr.: General
15 June 2007

Original: English

Letter dated 15 June 2007 from the Permanent Representative of Eritrea to the United Nations addressed to the President of the Security Council

I have the honour to forward a letter dated 15 June 2007 addressed to you from Mr. Osman Saleh, Minister for Foreign Affairs of the State of Eritrea, concerning the peace process on the border conflict between Eritrea and Ethiopia (see annex).

I should be grateful if you would kindly circulate the present letter and its annex as a document of the Security Council.

(*Signed*) Araya **Desta**
Ambassador
Permanent Representative

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Annex to the letter dated 15 June 2007 from the Permanent Representative of Eritrea to the United Nations addressed to the President of the Security Council

As you may recall, Eritrea has incessantly urged the UN Security Council to invoke Chapter VII of the UN Charter to compel Ethiopia to comply with its treaty obligations that are clearly stipulated in the Algiers Agreement as well as the in the provisions of international law on the respect of the sovereignty and territorial integrity of a fellow UN member State. Eritrea's appeals to the UN Security Council are based on two legal provisions: i) Article 14 of the Cessations of Hostilities Agreement that explicitly empowers the Security Council, as a guarantor of the Algiers Peace Agreement, to take punitive measures against the transgressing party in accordance with Chapter VII of the UN Charter; and, ii) Article 39 of the UN Charter that empowers the Security Council to decide on appropriate measures in the event of "the existence of any threat to the peace, breach of the peace, or act of aggression"..

Unfortunately and for reasons that we do not wish to describe here, the Security Council has to-date failed to shoulder its legal obligations. This has encouraged Ethiopia to flout the rule of law and occupy sovereign territories of a UN member State for five

years with impunity. And yet, with cynicism that exceeds all bounds, Ethiopia's Foreign Minister accuses, in his letter of 8 June to the Security Council, Eritrea of "violating the Algiers Peace Agreements and for disregarding general principles of international law, including the Charter of the United Nations".

This is astounding to say the least. The indelible fact is that it is Ethiopia that has violated the United Nations Charter and the Algiers Agreements. The statement of the UN Secretary General of March 2007 that Ethiopia distorts through deliberate omission in fact underlines that "the core" of the current problem is Ethiopia's refusal to comply with the "final and binding" decision of the Boundary Decision:

> Ethiopia's refusal to implement – fully and without preconditions – the final and binding decision of the Boundary Commission remains at the core of the continuing deadlock. I therefore strongly urge the Government of Ethiopia to comply with the demand of the Security Council, expressed in resolution 1640 (2005) and reiterated in resolution 1710 (2006). Full implementation of the latter resolution remains key to moving forward the demarcation process and to concluding the peace process.[1]

The President of the Eritrea Ethiopia Boundary Commission (EEBC) has expressed much the same view. In a Statement attached to his contemporaneous Report to the Secretary General, Commission President Sir Elihu Lauterpacht listed almost two dozen serious obstacles that Ethiopia had placed in the way of the Commission's work. These started within days of the announcement of the Award and continue to the present.[2]

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[1] United Nations Security Council, *Report of the Secretary General on Ethiopia and Eritrea*, S/2007/33 (22 January 2007) *at* page 7, paragraph 34. *See also*, page 8, paragraph 37 (referring to "Ethiopia in particular" as needing to "seize this opportunity to proceed with demarcation in accordance with the Boundary Commission's decisions...").

[2] Eritrea-Ethiopia Boundary Commission, *Statement by the Commission* (27 November 2006), *at* page 4-5, paragraph 10, *reproduced as* Enclosure to the *Special Report of the Secretary-General on Ethiopia and Eritrea*, United Nations S/2006/992 (15 December 2006), *at* page 9:

> [T]he obstacles from the Ethiopian side took various forms: prohibiting field-work within the territory under its control, thus impeding the survey of ground control points for the aerial photograph and the secondary datum survey (April to July 2002); filing extensive comments on the Delimitation Decision, amounting to an attempt to reopen elements of the substance of that Decision, instead of limiting itself to the requested comments on the draft 1:25,000 maps (January 2003); alleging that the Field Liaison Officers appointed by Eritrea were intelligence officers and refusing to allow field work to continue in Ethiopian territory, the failing to appoint ad hoc Field Liaison Officers within the prescribed time limit following the Commission's Order of 9 February 2003 so as to allow field work to resume without further delay (January to February 2003); failing

Ethiopia's violations of international law include its continuing illegal occupation of Eritrean territory; its physical interference with the work of both the Boundary Commission's field staff and UNMEE peacekeepers; its refusal to respond to EEBC requests to attend meetings or to provide information or financial support; and its repeated attempts to undermine the "final and binding" 13 April 2002 Boundary Commission Award.

1. Ethiopia's Violations of the United Nations Charter through its Military Occupation of Eritrean Territory

International law prohibits the forcible occupation of the territory of one state by another. Article 2(4) of the United Nations Charter summarizes this general principle when it states:

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to appoint new Field Liaison Officers for the remaining demarcation activities following the Commission's Decision pursuant to Article 15B of the Demarcation Direction (July 2003 to March 2006); failing to provide assurances for the security of all demarcation personnel (August 2003 to the present); failing to comment on maps which indicated the pillar locations in the Eastern Sector (September 2003); repeatedly refusing to authorise necessary flight requests lodged by the Chief Surveyor; eventually limiting the Commission's field work to the Eastern Sector by statements that the ad hoc Field Liaison Officers would only be permitted to operate in the Eastern Sector; complaining to the Secretary-General of the United Nations of what Ethiopia terms "illegal, unjust and irresponsible decisions" of the Commission in respect of Badme and parts of the Central Sector, and proposing that the Security Council set up an alternative mechanism to demarcate the parts of the boundary it contested (September 2003); denouncing in that same letter the Commission's Delimitation Decision by stating that it would only recognize the southern boundary of the Temporary Security Zone ("TSZ") as the international boundary; failing to provide assurances for the security of the contractors selected for the emplacement and as-built survey of the boundary pillars (September to October 2003); rejecting the Commission's invitation to attend a meeting to 5 November 2003, claiming that the notice was too short and that there was no likelihood of anything being achieved (October 2003); refusing to permit any work to be carried out by the Commissioners' field staff in the western and Central Sectors until the boundary in the Eastern Sector had been demarcated and subject to Ethiopia's approval of the Commission's method of demarcation (November 2003); failing to make prompt payment of its share of the Commission's expenses (February 2004 to February 2005); rejecting the Commission's invitation to a meeting to be held on 22 February 2005 on the ground that the meeting was premature, would be unproductive and could have an adverse impact on the demarcation process, as a result of which the Commission was obliged to cancel the meeting (February 2005); failing again to meet its financial obligations (may 2006 to the present); introducing qualifications to its previously unqualified acceptance of the final and binding quality of the Delimitation Decision (17 May 2006); failing to respond to the Commission's request for assurances of freedom of movement and security for its staff traveling to the region to reopen the Commission's Field Offices (July to August 2006); and failing to respond to the Commission's invitation to a rescheduled meeting on 24 August 2006.

> All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

Article 1.1. of the Algiers Agreement further states:

> The parties shall permanently terminate military hostilities between themselves. Each party shall refrain from the threat or use of force against the other.

By continuing to occupy Eritrean territory, through the use of military force, for more than five years after the boundary was definitively announced, Ethiopia has violated both Article 2(4) of the UN Charter and Article 1.1. of the Algiers Agreement.

The succinct observations that the Boundary Commission made on April 13, 2002 when rendering the Award further accentuates this reality. "The Commission recalls that the Parties have agreed that the Commission's Decision on the delimitation is final and binding, and that the Parties have agreed to respect the border identified by the Commission. The Commission considers that the fact it must now proceed to demarcate the boundary in accordance with the December 2000 Agreement does not qualify the immediate effect of the determination of the boundary between the Parties and the limits of their respective sovereignties. The Commission expects that the Parties will act accordingly".

Ethiopia's refusal to evacuate sovereign Eritrean territories in the TSZ thus constitute gross violations of Eritrea's sovereignty and territorial integrity in contravention of international law and the Cessation of Hostilities Agreement. The delimitation line recognized on 13 April 2002 was not a newly-created boundary, but rather the boundary that had existed at the point of Eritrean independence; this indeed was what the parties had agreed to in the Algiers Agreements, which mandated the EEBC to determine "the colonial treaty boundary".[3] Ethiopia has ignored both the Award and the obligations it created.

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[3] 18 June 2000 Algiers Cessation of Hostilities Agreement at page one states:

2. Ethiopia's Unlawful Interference with the EEBC and UNMEE Field Activities

In signing the two Algiers Agreements, Ethiopia undertook to cooperate with both UNMEE and the EEBC. Ethiopia has repeatedly violated its obligation to facilitate their work, starting almost simultaneously with the announcement of the Award and continuing to the present.

Hoping to create irreversible facts on the ground, Ethiopia also began to plant new settlements on the Eritrean side of the boundary. In July 2002 the Commission accordingly ordered Ethiopia to cease its unlawful settlement program and return the settlers to their homes in Central Tigray.[4]

The Security Council endorsed the Commission's order, as well.[5] Ethiopia refused to comply with—or even to acknowledge—the Boundary Commission's order, as endorsed by the Secretary General and the Security Council. In November 2002, the

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> Committing themselves [Eritrea and Ethiopia] to the following: ... Respect for the borders existing at independence as stated in resolution AHG/Res 16 (1) adopted by the OAU Summit in Cairo in 1964 and, in this regard, determine them on the basis of pertinent colonial treaties and applicable international law...

See also, e.g., United Nations Security Council, *Progress Report of the Secretary-General on Ethiopia and Eritrea, Addendum, Observations of the Eritrea-Ethiopia Boundary Commission*, S/2003/257/Add.1 (31 March 2003), *at* paragraphs 15-17 (boundary between Setit and Mareb Rivers had crystallised by 1935, citing 13 April 2002 Award).

[4] As described in President Lauterpacht's Report to the Security Council,

> On 17 July 2002, in response to a complaint by Eritrea that Ethiopian nationals were being settled in Dembe Mengul on the Eritrean side of the border as determined by the Commission, the Commission made an Order requiring Ethiopia to withdraw those nationals from the village. On 14 August 2002 the Security Council, in Resolution 1430, called on the parties to refrain from unilateral troop or population movements, including establishment of any new settlements in areas near the border, until demarcation and orderly transfer of territorial control has been accomplished in accordance with Article 4.16 of the Comprehensive Peace Agreement. Ethiopia did not comply with the Commission's Order. The 7 November 2002 the Commission formally determined that Ethiopia had not complied with its obligation and so reported to the Security Council. Ethiopia still has not complied.

Eritrea-Ethiopia Boundary Commission, *Sixteenth report on the work of the Commission* to the Secretary-General of the United Nations ("covering the period from 15 December 2004 to 28 February 2005"), *at* page 13, paragraph 17, *reproduced as* Annex I to the *Report of the Secretary-General on Ethiopia and Eritrea*, United Nations S2005/142 (7 March 2005). *See also*, United Nations Security Council, *Report of the Secretary-General on Ethiopia and Eritrea*, S/2005/142 (7 March 2005), *at* paragraph 40 ("According to the Commission, new construction has been undertaken in areas that were awarded to Eritrea...").

[5] *See also*, S/Res/1430 (2002) 14 August 2002 (calling on the parties "to cooperate fully and promptly with the Boundary Commission, including by implementing without conditions its binding Demarcation Directions, by abiding promptly by all its Orders, including the two issued on 17 July 2002...").

Boundary Commission specifically declared Ethiopia not in compliance and Ethiopia's refusal to remove its settlers from Eritrean territory continues to this day.[6]

Within two weeks of the announcement of the Boundary Commission's Delimitation Decision in April 2002, Ethiopia closed the territories that had just been recognized as Eritrean to both the United Nations Mission in Ethiopia and Eritrea (UNMEE) and the technical survey staff of the Eritrea-Ethiopia Boundary Commission. Ethiopia's termination of access to Eritrean territory was in direct violation of the explicit terms of the Algiers peace agreements. The Boundary Commission condemned Ethiopia's interference with UNMEE's and the Boundary Commission's work.[7]

In the Fifth Report of the EEBC to the Security Council (10 July 2002), EEBC President Lauterpacht described Ethiopia's unlawful refusal to cooperate in the following terms:

> On 27 April 2002, before the necessary ground work was completed, the Government of Ethiopia prohibited further work within the territory under its control .... In the meantime, Ethiopia has continued to prohibit work by the Commission's surveyors on the ground, notwithstanding my request that the prohibition be lifted. At the meeting on 21 May, I again urged the Ethiopian Government to lift the ban so that the Chief Surveyor's work could be completed before the beginning of the rainy season .... At the time of writing of this report the ban has not been lifted.[8]

Almost simultaneously with its denial of access, Ethiopia started to submit UNMEE officials entering Ethiopia to body searches

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[6] Eritrea-Ethiopia Boundary Commission, *Determination* (7 November 2002) *at* page 2, paragraph 3.

[7] The Secretary-General of the United Nations reported to the Security Council that less than two weeks after the announcement of the 13 April 2002 Boundary Decision, Ethiopia "prohibit[ed] personnel of UNMEE as well as the Secretary and Field Office of the Boundary Commission from crossing from Eritrea into Ethiopia." United Nations Security Council, *Report of the Secretary-General on Ethiopia and Eritrea*, S/2002/744 (10 July 2002), *at* paragraph 4. The Secretary-General confirmed that due to the Ethiopian prohibition on access, "the Field Office personnel of the Boundary Commission have been unable to operate in Ethiopia" – a fact that he characterized as "a source of serious concern." *Id.*, *at* paragraph 18 (emphasis added).

[8] Fifth Report of the Eritrea-Ethiopia Boundary Commission to the Secretary-General of the United Nations, *at* pages 27-28, paragraph 4, *as* Annex to the *Report of the Secretary-General on Ethiopia and Eritrea*, United Nations S/2002/744 (10 July 2002).

At around the same time, Ethiopian militias began harassing United Nations and Boundary Commission personnel attempting to carry on their field work in the border regions. On 4 October 2002, for example, Ethiopian militia armed with AK-47s illegally entered the TSZ and threatened UNMEE peacekeepers, firing over their heads. The militia were accompanied by around sixty Ethiopian civilians armed with knives and axes. On another occasion, Ethiopian military who were improperly occupying a proposed pillar location in the Eastern Sector disrupted the pillar emplacement survey being conducted by EEBC technical staff.[9]

Despite repeated calls from the Security Council, Ethiopia has since November 2004 engaged in a steady buildup of forces near the southern boundary of the Temporary Security Zone.[10] Much of this territory is on the Eritrean side of the international boundary. In reporting this development to the Security Council in March 2005, the Secretary General specifically noted that "there has been no significant movement or deployment of troops" by Eritrea.[11] He appealed to Ethiopia to redeploy its forces:

> I am concerned about a possible rise in tensions along the border in view of the build-up described above, as well as the training of Ethiopian troops in the adjacent areas south of the Temporary Security Zone and Ethiopian troop movements in Sector West. I appeal to the Government of Ethiopia to redeploy its troops away from the vicinity of the southern boundary of the Zone, in order to reinstate the situation that pertained before 16 December 2004.[12]

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[9] Eritrea-Ethiopia Boundary Commission, *Pillar Site Assessment Survey: Eastern Sector: Decision Points 32-41*, at paragraph 9.4 (2003).

[10] United Nations Security Council, *Report of the Secretary-General on Ethiopia and Eritrea*, S/2005/142 (7 March 2005), at page 1, paragraph 2:

> Following the announcement of the five-point proposal by Meles Zenawi, the Prime Minister of Ethiopia, on 25 November 2004 (see S/2004/973/Add.1), there has been a steady increase of troops of the Ethiopian armed forces south of the Temporary Security Zone. This development, which began on 16 December 2004, after advance notice by the Ethiopian Government, appears to be continuing....At the same time and to the extent that UNMEE is able to monitor the situation, there has been no significant movement or deployment of troops of the Eritrean Defence Forces, except for some adjustments in areas adjacent to the Zone to cover the main roads linking Eritrea with Ethiopia.

[11] United Nations Security Council, *Report of the Secretary-General on Ethiopia and Eritrea*, S/2005/142 (7 March 2005), at page 1, paragraph 2.

[12] United Nations Security Council, *Report of the Secretary-General on Ethiopia and Eritrea*, S/2005/142 (7 March 2005), at page 1, paragraph 3. *See also*, paragraph 38:

> 38. Members of the Security Council will recall that in my last report I urged the two parties not to undertake any activities that could undermine the integrity of the Temporary Security Zone or otherwise jeopardize the fragile and relative stability that has prevailed thus far. It is therefore

Ethiopia never complied with this call from the Secretary General.

3. Ethiopia's refusal to respond to the Boundary Commission's requests for information, invitations to meetings, and payment of financial assessments

Ethiopia attempts to characterize Eritrea as failing to cooperate with the Boundary Commission and thereby bringing the demarcation process to a halt. However, it was Ethiopia that repeatedly refused to attend Boundary Commission meetings and to submit comments, reactions, etc. in response to Boundary Commission requests for information. It also refuses to pay its financial assessments.

This pattern of uncooperative behavior first manifested itself in early 2003, when Ethiopia began simply to ignore any Commission orders that were not to its advantage. In March 2003, the Commission noted,

> Demarcation began in the Eastern Sector in March 2003…a set of marked maps showing proposed boundary pillar sites in this Sector was sent to the Parties for comment. Eritrea accepted these marked maps of the Eastern Sector but Ethiopia did not respond.[13]

In a similar vein, Ethiopia has repeatedly ignored the Commission's lawful instructions to supply to the Commission the security arrangements it proposed to put in place for protecting EEBC personnel and contractors while at work in Ethiopia.[14]

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troubling that Ethiopia's announcement of its five-point proposal was followed by a substantial redeployment of their forces near the southern boundary of the Zone.

[13] Eritrea-Ethiopia Boundary Commission, *Statement by the Commission* (27 November 2006), *at* page 3, paragraph 8, *reproduced as* Enclosure to the *Special Report of the Secretary-General on Ethiopia and Eritrea*, United Nations S/2006/992 (15 December 2006), *at* page 9.

[14] Eritrea-Ethiopia Boundary Commission, *Statement by the Commission* (27 November 2006), *at* page 4-5, paragraph 10, (referring to Ethiopia "failing to provide assurances for the security of all demarcation personnel (August 2003 to the present)"; "failing to respond to the Commission's request for assurances of freedom of movement and security for its staff traveling to the region to reopen the Commission's Field Offices (July to August 2006)"; *reproduced as* Enclosure to the *Special Report of the Secretary-General on Ethiopia and Eritrea*, United Nations S/2006/992 (15 December 2006), *at* page 9.

Ethiopia has exhibited the same uncooperative approach toward the Commission's invitation to meetings. Regarding Ethiopia's refusal to attend a proposed EEBC meeting in London in February 2005, President Lauterpacht noted,

> On 4 February 2005 the Commission invited the Parties to meet with it in London on 22 February 2005. Eritrea accepted the invitation. Ethiopia declined it, saying the meeting would be "premature ...would be unproductive and could have an adverse impact on the demarcation process. The first priority for success in the demarcation process is to bring about good faith between the Parties. The Eritrean letter indicates no willingness on Eritrea's part in this regard."[15]...

As a result, the meeting had to be canceled.[16] Ethiopia also refused to attend a meeting proposed by the Commission for 24 August 2006.[17] During that same month, Ethiopian officials refused to meet with the Commission's Deputy Secretary and field office staff in Addis Ababa.[18] In November of the same year, Ethiopia refused the Commission's invitation to attend a meeting in The Hague on 20 November 2006.[19] Ethiopia likewise continues its long-time refusal to pay its share of the financial expenses of the Commission.[20] It is now several years in arrears.

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[15] Eritrea-Ethiopia Boundary Commission, *Sixteenth report on the work of the Commission* to the Secretary-General of the United Nations ("covering the period from 15 December 2004 to 28 February 2005"), *at* paragraph 3, *reproduced as* Annex I to the *Report of the Secretary-General on Ethiopia and Eritrea*, United Nations S2005/142 (7 March 2005), *at* page 10.

[16] Eritrea-Ethiopia Boundary Commission, *Sixteenth report on the work of the Commission* to the Secretary-General of the United Nations ("covering the period from 15 December 2004 to 28 February 2005") *at* paragraph 7, ("In view of the refusal of Ethiopia to attend the 22 February meeting, the Commission had no alternative but to cancel it."), *reproduced as* Annex I to the *Report of the Secretary-General on Ethiopia and Eritrea*, United Nations S2005/142 (7 March 2005), *at* page 10.

[17] United Nations Security Council, *Report of the Secretary-General on Ethiopia and Eritrea*, S/2006/749 (19 September 2006), *at* paragraph 20 (noting Ethiopia's refusal to respond to Commission's invitation to a meeting on 24 August 2006).

[18] United Nations Security Council, *Report of the Secretary-General on Ethiopia and Eritrea*, S/2006/749 (19 September 2006), *at* paragraph 5 (noting the refusal of relevant Ethiopian officials to meet with the Commission's Deputy Secretary and field office staff sent in August 2006 to Addis Ababa to reopen the field office).

[19] Eritrea-Ethiopia Boundary Commission: *twenty-second report on the work of the Commission* to the Secretary-General of the United Nations, at paragraph 6 (referring to Ethiopia's letter dated 13 November 2006, declining the Commission's invitation to attend a meeting on 20 November 2006 in The Hague), *reproduced as* Annex II of the *Report of the Secretary-General on Ethiopia and Eritrea*, United Nations S/2007/33 (22 January 2007).

[20] Eritrea-Ethiopia Boundary Commission: *twenty-second report on the work of the Commission* to the Secretary-General, *at* paragraph 12:

> Finally, the Commission regrets that Ethiopia, despite repeated reminders since 21 May 2006, has still not paid the contribution to the work of the Commission presently due from it, as required by Article 4 (17) of the Algiers Agreement.

Reproduced as Annex II of the *Report of the Secretary-General on Ethiopia and Eritrea*, United Nations S/2007/33 (22 January 2007).

4. Ethiopia's Unlawful Attempts to Dictate Changes to the Contours of the International Boundary

At the same time that Ethiopia physically interfered with the UNMEE and EEBC staff carrying out their mandates, and ignored the Commission's invitations to meetings and its other lawful orders, Ethiopia sought "correction" of the 13 April 2002 Decision. Its first demand (filed on 13 May 2002) was quickly rejected as inadmissible by the Boundary Commission.[21] Despite the Commission's rejection of its efforts to alter the "final and binding" boundary, Ethiopia persisted, for example by filing another lengthy demand for alterations in late January 2003.[22] The Commission has consistently rejected these unlawful efforts to revise the boundary Award, repeating that, in the absence of express authorization by the Parties, it lacks the authority to vary the delimited line.[23]

Ethiopia has attempted to rationalize its unlawful rejection of the Boundary Commission's Award by claiming that it is not possible to demarcate the boundary

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[21] The Ethiopian request for "correction" of the 13 April 2002 Decision, and its subsequent rejection as inadmissible by the Eritrea-Ethiopia Boundary Commission, is discussed in Eritrea-Ethiopia Boundary Commission, *Decision Regarding the "Request for Interpretation, Correction, and Consultation" Submitted by the Federal Democratic Republic of Ethiopia on 13 May 2002* (24 June 2002). On pages 3-4 of that Decision, the EEBC wrote,

> The Ethiopian request appears to be founded on a misapprehension regarding the scope and effect of Articles 28 and 29 of the Commission's Rules of Procedure .... The concept of interpretation does not open up the possibility of appeal against a decision or the reopening of matters clearly settled by a decision. The Commission, through its President, has already stated "that the provisions of Articles 28 and 29 of the Rules of Procedure neither allow substantive amendment nor affect the binding quality of the Decision as rendered on 13 April 2002 ...." Accordingly, the Commission concludes that the Ethiopian request is inadmissible and no further action will be taken upon it.

[22] Eritrea-Ethiopia Boundary Commission, *Statement by the Commission* (27 November 2006), *at* page 10, paragraph 7:

> On 24 January 2003, in response to a request by the Commission for comments on the draft 1:25,000 maps, Ethiopia filed a memorandum setting out at length its views on the process of demarcation....it contended that, in the process of demarcation, alterations or adjustments of the delimited boundary should be made.... The Commission later ruled that most of these contentions were inadmissible.

Reproduced as Enclosure to the *Special Report of the Secretary-General on Ethiopia and Eritrea*, United Nations S/2006/992 (15 December 2006), *at* page 9.

[23] United Nations Security Council, *Progress Report of the Secretary-General on Ethiopia and Eritrea, Addendum, Observations of the Eritrea-Ethiopia Boundary Commission*, S/2003/257/Add.1 (31 March 2003), *at* pages 2-3, paragraphs 5-9. The sole exception recognized by the Commission involved cases of manifest impracticability (paragraph 8).

without negotiations—so-called "dialogue"—between the parties. In March 2005, the Commission described Ethiopia's strategy as simply "the latest in a series of obstructive actions":

> Ethiopia is not prepared to allow demarcation to continue in the manner laid down in the Demarcation Directions and in accordance with the timeline set by the Commission. It now insists on prior "dialogue" but has rejected the opportunity for such "dialogue" within the framework of the demarcation process provided by the Commission's proposal to meet with the Parties on 22 February. This is the latest in a series of obstructive actions taken since the summer of 2002 and belies the frequently professed acceptance by Ethiopia of the Delimitation Decision.[24]

Despite the Commission's consistent clarity in rejecting Ethiopia's demand for "dialogue", however, Ethiopia now suggests that in November 2006 President Lauterpacht approved Ethiopia's stance as consistent with the EEBC Award.[25] Taking out of context one or two sentences from a meeting transcript, Ethiopia ignores President Lauterpacht's repeated suggestions that counsel for Ethiopia owed to the Commission a better explanation regarding whether or not Ethiopia was prepared to cooperate with the demarcation.[26] As President Lauterpacht described Ethiopia's responses shortly

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[24] *Eritrea-Ethiopia Boundary Commission, Sixteenth report on the work of the Commission* to the Secretary-General of the United Nations ("covering the period from 15 December 2004 to 28 February 2005"), *at* paragraph 6, *reproduced as* Annex I to the *Report of the Secretary-General on Ethiopia and Eritrea*, United Nations S/2005/142 (7 March 2005). *See also* United Nations Security Council, *Report of the Secretary-General on Ethiopia and Eritrea*, S/2005/142 (7 March 2005), paragraph 14:

> According to the Boundary Commission, Ethiopia is not prepared to allow demarcation to continue in the manner laid down in the demarcation directions and in accordance with the timeline set by the Commission. It now insists on prior dialogue, but has rejected the opportunity for such dialogue within the framework of the demarcation process. In the assessment of the Commission, this is the latest in a series of obstructive actions taken since the summer of 2002, which belies the frequently professed acceptance by Ethiopia of the delimitation decision.

[25] Letter dated 8 June 2007 from the Minister of Foreign Affairs of Ethiopia to the Secretary General of the United Nations.

[26] Transcript of the Meeting of the Eritrea Ethiopia Boundary Commission with the Parties (10 March 2006), *at* page 9-10, lines 1-7 and 20-30:

> THE PRESIDENT: Again, is it correct that Ethiopia favours the resumption of the demarcation along the lines that I indicated?
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> MR. PICARD: As I said, we are in a position of listening to and considering the views of all Parties, looking forward to establishing the machinery to which you have referred, working with the experts and getting ourselves in a position to proceed.
>
> THE PRESIDENT: It is not quite clear to me whether or not that means we can start work now with Ethiopia's co-operation…
>
> MR. PICARD: Mr. President, we think that a lot can be accomplished in this meeting…I have to say, however, that the Government of Ethiopia will want to consider everything that is said here…

thereafter, "when asked to confirm its continuing acceptance of the Delimitation Decision, Ethiopia repeatedly qualified its position by saying that it wished negotiations to take place regarding such 'anomalies and impracticabilities'." [27]

Any suggestions that Ethiopia's current posture satisfies the EEBC rulings are easily dispelled by President Lauterpacht's own most recent summary of Ethiopia's position:

> ... The truth of the matter appears to be that Ethiopia is dissatisfied with the substance to the Commission's Delimitation Decision and has been seeking, ever since April 2002, to find ways of changing it. This is not an approach which the Commission is empowered to adopt and is not one to which the Commission can lend itself.[28]

President Lauterpacht simultaneously reported to Ethiopian Foreign Minister Seyoum Mesfin his regret that "Ethiopia has so persistently maintained a position of non-compliance with its obligations in relation to the Commission."[29]

Conclusion

Ethiopia's audacity to accuse Eritrea of violations of the Algiers Agreement and to insult the intelligence of the international community through mendacious distortion of facts and events amplify only one unfathomable element. The Security Council's kid-glove treatment of Ethiopia will not promote the rule of law and regional peace,

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See also transcript at page 13, lines 15-19 (Counsel for Ethiopia avoiding making any direct answer to President's question regarding "will Ethiopia be in a position soon to let us have its views on how security is to be assured?").

[27] Letter dated 27 November 2006 from the President of the Eritrea Ethiopia Boundary Commission to the Minister of Foreign Affairs of Ethiopia, at page 1.

[28] *Attachment to paragraph 6 of the twenty-second report of the Eritrea-Ethiopia Boundary Commission: letter dated 27 November 2006 from the President of the Commission to the Minister of Foreign Affairs of Ethiopia*, at page 16, *reproduced as* Enclosure to *the Report of the Secretary General on Ethiopia and Eritrea*, United Nations S/2007/33 (22 January 2007), at page 14. *See also* page 15, "Eritrea's insistence on strict adherence to the terms of the Delimitation Decision," the President added, "was a position which it was entitled to adopt in accordance with the Algiers Agreement."

[29] *Attachment to paragraph 6 of the twenty-second report of the Eritrea-Ethiopia Boundary Commission: letter dated 27 November 2006 from the President of the Commission to the Minister of Foreign Affairs of Ethiopia*, at page 16, *reproduced as* Enclosure to the *Report of the Secretary General on Ethiopia and Eritrea*, United Nations S/2007/33 (22 January 2007), at page 14.

but will only create and aggravate regional tension and instability. Ethiopia's recent letter to the Security Council makes it abundantly clear that it will not allow demarcation to take place "without good faith negotiations" with Eritrea. This is nothing more than another euphemism for altering the "final and binding" Boundary Commission decision.

(*Signed*) Osman **Saleh**
Minister